

under this section, provided temporary authority for the Secretaries of Agriculture and Energy to promote biomass research and development. As amended by Pub. L. 109-58, the program became permanent, and title III of Pub. L. 106-224 was transferred to chapter 112 (§8601 et seq.) of this title.

§ 8102. Federal procurement of biobased products

(a) Application of section

Except as provided in subsection (c) of this section, each procuring agency shall comply with the requirements set forth in this section and any regulations issued under this section, with respect to any purchase or acquisition of a procurement item where the purchase price of the item exceeds \$10,000 or where the quantity of such items or of functionally equivalent items purchased or acquired in the course of the preceding fiscal year was \$10,000 or more.

(b) Procurement subject to other law

Any procurement, by any procuring agency, which is subject to regulations of the Administrator under section 6962 of title 42, shall not be subject to the requirements of this section to the extent that such requirements are inconsistent with such regulations.

(c) Procurement preference

(1) Except as provided in paragraph (2), after the date specified in applicable guidelines prepared pursuant to subsection (e) of this section, each procuring agency which procures any items designated in such guidelines shall, in making procurement decisions, give preference to such items composed of the highest percentage of biobased products practicable or such items that comply with the regulations issued under section 6914b-1 of title 42, consistent with maintaining a satisfactory level of competition, considering such guidelines.

(2) FLEXIBILITY.—Notwithstanding paragraph (1), a procuring agency may decide not to procure such items if the procuring agency determines that the items—

- (A) are not reasonably available within a reasonable period of time;
- (B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or
- (C) are available only at an unreasonable price.

(3) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting offices shall require that, with respect to biobased products, vendors certify that the biobased products to be used in the performance of the contract will comply with the applicable specifications or other contractual requirements.

(d) Specifications

All Federal agencies that have the responsibility for drafting or reviewing specifications for procurement items procured by procuring agencies shall, within one year after the date of publication of applicable guidelines under subsection (e) of this section, or as otherwise specified in such guidelines, assure that such specifications require the use of biobased products consistent with the requirements of this section.

(e) Guidelines

(1) In general

The Secretary, after consultation with the Administrator, the Administrator of General Services, and the Secretary of Commerce (acting through the Director of the National Institute of Standards and Technology), shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall—

- (A) designate those items which are or can be produced with biobased products and whose procurement by procuring agencies will carry out the objectives of this section;
- (B) set forth recommended practices with respect to the procurement of biobased products and items containing such materials and with respect to certification by vendors of the percentage of biobased products used; and
- (C) provide information as to the availability, relative price, performance, and environmental and public health benefits, of such materials and items and where appropriate shall recommend the level of biobased material to be contained in the procured product.

(2) Considerations

In making the designation under paragraph (1)(A), the Secretary shall, at a minimum, consider—

- (A) the availability of such items; and
- (B) the economic and technological feasibility of using such items, including life cycle costs.

(3) Final guidelines

The Secretary shall prepare final guidelines under this section within 180 days after May 13, 2002.

(f) Office of Federal Procurement Policy

The Office of Federal Procurement Policy, in cooperation with the Secretary, shall implement the requirements of this section. It shall be the responsibility of the Office of Federal Procurement Policy to coordinate this policy with other policies for Federal procurement to implement the requirements of this section, and, every two years beginning in 2003, to report to the Congress on actions taken by procuring agencies and the progress made in the implementation of this section, including agency compliance with subsection (d) of this section.

(g) Procurement program

(1) Within one year after the date of publication of applicable guidelines under subsection (e) of this section, each Federal agency shall develop a procurement program which will assure that items composed of biobased products will be purchased to the maximum extent practicable and which is consistent with applicable provisions of Federal procurement law.

(2) Each procurement program required under this subsection shall, at a minimum, contain—

- (A) a biobased products preference program;
- (B) an agency promotion program to promote the preference program adopted under subparagraph (A); and

(C) annual review and monitoring of the effectiveness of an agency's procurement program.

(3) In developing the preference program, the following options shall be considered for adoption:

(A) CASE-BY-CASE POLICY DEVELOPMENT.—Subject to the limitations of subsection (c)(2)(A) through (C) of this section, a policy of awarding contracts to the vendor offering an item composed of the highest percentage of biobased products practicable. Subject to such limitations, agencies may make an award to a vendor offering items with less than the maximum biobased products content.

(B) MINIMUM CONTENT STANDARDS.—Minimum biobased products content specifications which are set in such a way as to assure that the biobased products content required is consistent with the requirements of this section, without violating the limitations of subsection (c)(2) (A) through (C) of this section.

Federal agencies shall adopt one of the options set forth in subparagraphs (A) and (B) or a substantially equivalent alternative, for inclusion in the procurement program.

(h) Labeling

(1) In general

The Secretary, in consultation with the Administrator, shall establish a voluntary program under which the Secretary authorizes producers of biobased products to use the label "U.S.D.A. Certified Biobased Product".

(2) Eligibility criteria

Within one year after May 13, 2002, the Secretary, in consultation with the Administrator, shall issue criteria for determining which products may qualify to receive the label under paragraph (1). The criteria shall encourage the purchase of products with the maximum biobased content, and should, to the maximum extent possible, be consistent with the guidelines issued under subsection (e) of this section.

(3) Use of the label

The Secretary shall ensure that the label referred to in paragraph (1) is used only on products that meet the criteria issued pursuant to paragraph (2).

(4) Recognition

The Secretary shall establish a voluntary program to recognize Federal agencies and private entities that use a substantial amount of biobased products.

(i) Limitation

Nothing in this section shall apply to the procurement of motor vehicle fuels or electricity.

(j) Inclusion

Not later than 90 days after August 8, 2005, the Architect of the Capitol, the Sergeant at Arms of the Senate, and the Chief Administrative Officer of the House of Representatives shall establish procedures that apply the requirements of this section to procurement for the Capitol Complex.

(k) Funding

(1) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(2) Funding for testing of biobased products

(A) In general

Of the funds of the Commodity Credit Corporation, the Secretary shall use \$1,000,000 for each of fiscal years 2002 through 2007 to support testing of biobased products to carry out this section.

(B) Use of funds

Amounts made available under subparagraph (A) may be used to support contracts or cooperative agreements with entities that have experience and special skills to conduct such testing.

(C) Priority

At the discretion of the Secretary, the Secretary may give priority to the testing of products for which private sector firms provide cost sharing for the testing.

(Pub. L. 107-171, title IX, § 9002, May 13, 2002, 116 Stat. 476; Pub. L. 109-58, title II, § 205, title IX, § 943(a)(2), (b), Aug. 8, 2005, 119 Stat. 654, 880, 881.)

AMENDMENTS

2005—Subsecs. (a), (b). Pub. L. 109-58, § 943(a)(2)(A), substituted "procuring agency" for "Federal agency".

Subsec. (c)(1). Pub. L. 109-58, § 943(a)(2)(A), substituted "procuring agency" for "Federal agency".

Pub. L. 109-58, § 205, inserted "or such items that comply with the regulations issued under section 6914b-1 of title 42" after "practicable".

Subsec. (c)(2). Pub. L. 109-58, § 943(a)(2)(B), substituted "Flexibility" for "Agency flexibility" in heading and "a procuring agency" for "an agency" and "the procuring agency" for "the agency" in introductory provisions.

Subsec. (d). Pub. L. 109-58, § 943(a)(2)(C), substituted "procured by procuring agencies" for "procured by Federal agencies".

Subsec. (f). Pub. L. 109-58, § 943(a)(2)(D), substituted "procuring agencies" for "Federal agencies".

Subsecs. (j), (k). Pub. L. 109-58, § 943(b), added subsec. (j) and redesignated former subsec. (j) as (k).

PROCEDURE

Pub. L. 109-58, title IX, § 943(d), Aug. 8, 2005, 119 Stat. 881, provided that: "Requirements issued under the amendments made by subsection (b) [amending this section] shall be made in accordance with directives issued by the Committee on Rules and Administration of the Senate and the Committee on House Administration of the House of Representatives."

§ 8103. Biorefinery development grants

(a) Purpose

The purpose of this section is to assist in the development of new and emerging technologies for the use of biomass, including lignocellulosic biomass, so as to—

- (1) develop transportation and other fuels, chemicals, and energy from renewable sources;
- (2) increase the energy independence of the United States;
- (3) provide beneficial effects on conservation, public health, and the environment;
- (4) diversify markets for raw agricultural and forestry products; and